

# SENATE, No. 913

## STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED JANUARY 17, 2012

**Sponsored by:**

**Senator STEVEN V. OROHO**

**District 24 (Morris, Sussex and Warren)**

**Senator JEFF VAN DREW**

**District 1 (Atlantic, Cape May and Cumberland)**

**SYNOPSIS**

Revises “Administrative Procedure Act” concerning conflicts between rules of different State agencies.

**CURRENT VERSION OF TEXT**

As introduced.



S913 OROHO, VAN DREW

2

1 AN ACT concerning the “Administrative Procedure Act” and  
2 amending and supplementing P.L.1968, c.410.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. Section 4 of P.L.1968, c.410 (C.52:14B-4) is amended as  
8 follows:

9 4. (a) Prior to the adoption **[,]** of any new rule, or the  
10 amendment, or repeal, or readoption of **[any]** an existing rule,  
11 except as may be otherwise provided, the agency shall:

12 (1) Prior to delivering the rule proposal to the Office of  
13 Administrative Law, determine whether any other agency regulates  
14 the activity or has concurrent or conflicting jurisdiction over any  
15 aspect of the subject matter. If any such agencies are identified, the  
16 agency considering the proposed rule shall consult with the other  
17 agencies to determine each agency’s role in regulating the subject  
18 matter and shall also prevent the proposed rule from conflicting  
19 with or being inconsistent with any existing rules. If the agencies  
20 cannot resolve any issue relating to concurrent or conflicting  
21 jurisdiction, the agency considering the proposal shall advise the  
22 Governor and the director of the impasse for appropriate resolution  
23 as may be devised by the agencies or directed by the Governor.

24 If it is determined that the conflict or inconsistency is the result  
25 of statutory law, the head of the agency considering the proposal  
26 shall send written notice of this finding to the President of the  
27 Senate, the Speaker of the General Assembly, and the chairs of the  
28 Senate Legislative Oversight Committee and the Assembly  
29 Regulatory Oversight and Gaming Committee, or their successors.

30 For purposes of this paragraph: a “conflict” arises when an  
31 agency seeks to propose a rule, which if complied with, would  
32 result in noncompliance with another rule; and “inconsistent” means  
33 an agency seeks to propose a rule, which if adopted, would be  
34 incompatible with another rule.

35 **[(1)] (2)** Give at least 30 days' notice of its intended action. The  
36 notice shall include a statement of either the terms or substance of  
37 the intended action or a description of the subjects and issues  
38 involved, and the time when, the place where, and the manner in  
39 which interested persons may present their views thereon. The  
40 notice shall be mailed to all persons who have made timely requests  
41 of the agency for advance notice of its rule-making proceedings and  
42 in addition to other public notice required by law shall be published  
43 in the New Jersey Register. Notice shall also be distributed to the  
44 news media maintaining a press office to cover the State House  
45 Complex, and made available electronically through the largest

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 nonproprietary cooperative public computer network. Each agency  
2 shall additionally publicize the intended action and shall adopt rules  
3 to prescribe the manner in which it will do so, and inform those  
4 persons most likely to be affected by or interested in the intended  
5 action. Methods that may be employed include publication of the  
6 notice in newspapers of general circulation or in trade, industry,  
7 governmental or professional publications, distribution of press  
8 releases to the news media and posting of notices in appropriate  
9 locations. The rules shall prescribe the circumstances under which  
10 each additional method shall be employed;

11 ~~[(2)]~~ (3) Prepare for public distribution at the time the notice  
12 appears in the Register a statement setting forth a summary of the  
13 proposed rule, a clear and concise explanation of the purpose and  
14 effect of the rule, the specific legal authority under which its  
15 adoption is authorized, a description of the expected socio-  
16 economic impact of the rule, a regulatory flexibility analysis, or the  
17 statement of finding that a regulatory flexibility analysis is not  
18 required, as provided in section 4 of P.L.1986, c.169 (C.52:14B-  
19 19), a jobs impact statement which shall include an assessment of  
20 the number of jobs to be generated or lost if the proposed rule takes  
21 effect, an agriculture industry impact statement as provided in  
22 section 7 of P.L.1998, c.48 (C.4:1C-10.3), and a housing  
23 affordability impact statement and a smart growth development  
24 impact statement, as provided in section 31 of P.L.2008, c.46  
25 (C.52:14B-4.1b);

26 ~~[(3)]~~ (4) Afford all interested persons reasonable opportunity  
27 to submit data, views, or arguments, orally or in writing. The  
28 agency shall consider fully all written and oral submissions  
29 respecting the proposed rule. If within 30 days of the publication of  
30 the proposed rule sufficient public interest is demonstrated in an  
31 extension of the time for submissions, the agency shall provide an  
32 additional 30 day period for the receipt of submissions by interested  
33 parties. The agency shall not adopt the proposed rule until after the  
34 end of that 30 day extension.

35 The agency shall conduct a public hearing on the proposed rule  
36 at the request of a committee of the Legislature, or a governmental  
37 agency or subdivision, or if sufficient public interest is shown,  
38 provided such request is made to the agency within 30 days  
39 following publication of the proposed rule in the Register. The  
40 agency shall provide at least 15 days' notice of such hearing, which  
41 shall be conducted in accordance with the provisions of subsection  
42 (g) of this section.

43 The head of each agency shall adopt as part of its rules of  
44 practice adopted pursuant to section 3 of P.L.1968, c.410  
45 (C.52:14B-3) definite standards of what constitutes sufficient public  
46 interest for conducting a public hearing and for granting an  
47 extension pursuant to this paragraph; and

1        ~~[(4)]~~ (5) Prepare for public distribution a report listing all  
2 parties offering written or oral submissions concerning the rule,  
3 summarizing the content of the submissions and providing the  
4 agency's response to the data, views and arguments contained in the  
5 submissions.

6        (b) A rule prescribing the organization of an agency may be  
7 adopted at any time without prior notice or hearing. Such rules  
8 shall be effective upon filing in accordance with section 5 of  
9 P.L.1968, c.410 (C.52:14B-5) or upon any later date specified by  
10 the agency.

11        (c) If an agency finds that an imminent peril to the public  
12 health, safety, or welfare requires adoption of a rule upon fewer  
13 than 30 days' notice and states in writing its reasons for that finding,  
14 and the Governor concurs in writing that an imminent peril exists, it  
15 may proceed without prior notice or hearing, or upon any  
16 abbreviated notice and hearing that it finds practicable, to adopt the  
17 rule. The rule shall be effective for a period of not more than 60  
18 days unless each house of the Legislature passes a resolution  
19 concurring in its extension for a period of not more than 60  
20 additional days. The rule shall not be effective for more than 120  
21 days unless repromulgated in accordance with normal rule-making  
22 procedures.

23        (d) No rule hereafter adopted is valid unless adopted in  
24 substantial compliance with P.L.1968, c.410 (C.52:14B-1 et seq.).  
25 A proceeding to contest any rule on the ground of noncompliance  
26 with the procedural requirements of P.L.1968, c.410 (C.52:14B-1 et  
27 seq.) shall be commenced within one year from the effective date of  
28 the rule.

29        (e) An agency may file a notice of intent with respect to a  
30 proposed rule-making proceeding with the Office of Administrative  
31 Law, for publication in the New Jersey Register at any time prior to  
32 the formal notice of action required in subsection (a) of this section.  
33 The notice shall be for the purpose of eliciting the views of  
34 interested parties on an action prior to the filing of a formal rule  
35 proposal. An agency may use informal conferences and  
36 consultations as means of obtaining the viewpoints and advice of  
37 interested persons with respect to contemplated rule-making. An  
38 agency may also appoint committees of experts or interested  
39 persons or representatives of the general public to advise it with  
40 respect to any contemplated rule-making.

41        (f) An interested person may petition an agency to adopt a new  
42 rule, or amend or repeal any existing rule. Each agency shall  
43 prescribe by rule the form for the petition and the procedure for the  
44 submission, consideration and disposition of the petition. The  
45 petition shall state clearly and concisely:

46        (1) The substance or nature of the rule-making which is  
47 requested;

1 (2) The reasons for the request and the petitioner's interest in the  
2 request;

3 (3) References to the authority of the agency to take the  
4 requested action.

5 The petitioner may provide the text of the proposed new rule,  
6 amended rule or repealed rule.

7 Within 60 days following receipt of any such petition, the agency  
8 shall either; (i) deny the petition, giving a written statement of its  
9 reasons; (ii) grant the petition and initiate a rule-making proceeding  
10 within 90 days of granting the petition; or (iii) refer the matter for  
11 further deliberations which shall be concluded within 90 days of  
12 referring the matter for further deliberations. Upon conclusion of  
13 such further deliberations, the agency shall either deny the petition  
14 and provide a written statement of its reasons or grant the petition  
15 and initiate a rule-making proceeding within 90 days. Upon the  
16 receipt of the petition, the agency shall file a notice stating the name  
17 of the petitioner and the nature of the request with the Office of  
18 Administrative Law for publication in the New Jersey Register.  
19 Notice of formal agency action on such petition shall also be filed  
20 with the Office of Administrative Law for publication in the  
21 Register.

22 If an agency fails to act in accordance with the time frame set  
23 forth in the preceding paragraph, upon written request by the  
24 petitioner, the director of the Office of Administrative Law shall  
25 order a public hearing on the rule-making petition and shall provide  
26 the agency with a notice of the director's intent to hold the public  
27 hearing if the agency does not. If the agency does not provide  
28 notice of a hearing within 15 days of the director's notice, the  
29 director shall schedule and provide the public with a notice of that  
30 hearing at least 15 days prior thereto. If the public hearing is held  
31 by the Office of Administrative Law, it shall be conducted by an  
32 administrative law judge, a person on assignment from another  
33 agency, a person from the Office of Administrative Law assigned  
34 pursuant to subsection o. of section 5 of P.L.1978, c.67 (C.52:14F-  
35 5), or an independent contractor assigned by the director. The  
36 petitioner and the agency shall participate in the public hearing and  
37 shall present a summary of their positions on the petition, a  
38 summary of the factual information on which their positions on the  
39 petition are based and shall respond to questions posed by any  
40 interested party. The hearing procedure shall otherwise be  
41 consistent with the requirements for the conduct of a public hearing  
42 as prescribed in subsection (g) of section 4 of P.L.1968, c.410  
43 (C.52:14B-4), except that the person assigned to conduct the  
44 hearing shall make a report summarizing the factual record  
45 presented and the arguments for and against proceeding with a rule  
46 proposal based upon the petition. This report shall be filed with the  
47 agency and delivered or mailed to the petitioner. A copy of the

1 report shall be filed with the Legislature along with the petition for  
2 rule-making.

3 (g) All public hearings shall be conducted by a hearing officer,  
4 who may be an official of the agency, a member of its staff, a  
5 person on assignment from another agency, a person from the  
6 Office of Administrative Law assigned pursuant to subsection o. of  
7 section 5 of P.L.1978, c.67 (C.52:14F-5) or an independent  
8 contractor. The hearing officer shall have the responsibility to  
9 make recommendations to the agency regarding the adoption,  
10 amendment or repeal of a rule. These recommendations shall be  
11 made public. At the beginning of each hearing, or series of  
12 hearings, the agency, if it has made a proposal, shall present a  
13 summary of the factual information on which its proposal is based,  
14 and shall respond to questions posed by any interested party.  
15 Hearings shall be conducted at such times and in locations which  
16 shall afford interested parties the opportunity to attend. A verbatim  
17 record of each hearing shall be maintained, and copies of the record  
18 shall be available to the public at no more than the actual cost,  
19 which shall be that of the agency where the petition for rule-making  
20 originated.

21 (cf: P.L.2008, c.46, s.3)

22

23 2. (New section) a. In the instance of an alleged conflict or  
24 inconsistency among adopted rules of different agencies, as set  
25 forth in section 4 of P.L.1968, c.410 (C.52:14B-4) an interested or  
26 affected person or agency may petition the director to request  
27 referral for appropriate resolution. The Office of Administrative  
28 Law shall adopt a rule prescribing the form and procedure for the  
29 submission of the petition pursuant to this section. The petition  
30 shall state clearly and concisely the substance or nature of the  
31 alleged conflict or consistency and the petitioner's interest in the  
32 conflict or inconsistency. If, upon receipt of a petition, it is  
33 determined by the director that a conflict or inconsistency exists,  
34 the director shall notify the agencies responsible for the conflicting  
35 or inconsistent rules. If the agencies cannot resolve the issue  
36 relating to concurrent or conflicting jurisdiction, the head of either  
37 or both of the agencies that adopted the rules under review shall  
38 advise the Governor and the director of the impasse for such  
39 appropriate resolution as may be directed by the Governor.

40 If it is determined that the conflict or inconsistency is the result  
41 of statutory law, the head of the adopting agency shall send written  
42 notice of this finding to the President of the Senate, the Speaker of  
43 the General Assembly, and the chairs of the Senate Legislative  
44 Oversight Committee and the Assembly Regulatory Oversight and  
45 Gaming Committee, or their successors.

46 b. For the purposes of this section: "conflict" and  
47 "inconsistent" mean the same as those terms are defined in

1 paragraph (1) of subsection (a) of section 4 of P.L.1968, c.410  
2 (C.52:14B-4).

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4 3. This act shall take effect immediately.

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STATEMENT

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9 This bill revises the "Administrative Procedure Act," P.L.1968,  
10 c.410 (C.52:14B-1 et seq.) (APA) to establish two procedures by  
11 which conflicts or inconsistencies between rules of different  
12 agencies can be resolved.

13 This bill requires an agency, prior to proposing a new rule, or  
14 proposing the amendment, repeal or readoption of an existing rule,  
15 to determine whether any other agency regulates the activity or has  
16 concurrent or conflicting jurisdiction over any aspect of the subject  
17 matter. If a conflict or concurrent jurisdiction is found, the agency  
18 considering the proposed rule would be required to (1) consult with  
19 the other agencies to determine each agency's role in regulating the  
20 subject matter, and (2) prevent the proposed rule from conflicting  
21 with or being inconsistent with any existing rules. If a conflict  
22 among agencies cannot be resolved, the agency considering the  
23 proposal would advise the Governor and the director of the Office  
24 of Administrative Law (OAL) of the impasse for appropriate  
25 resolution as may be devised by the agencies or directed by the  
26 Governor.

27 As used in the bill, a "conflict" arises when an agency seeks to  
28 propose a rule, which if complied with, would result in  
29 noncompliance with another rule; and "inconsistent" means an  
30 agency seeks to propose a rule, which if adopted, would be  
31 incompatible with another rule.

32 In addition, this bill establishes a procedure whereby an  
33 interested or affected party or agency may petition the OAL director  
34 to request referral for appropriate resolution of an alleged conflict  
35 or inconsistency among adopted rules of different agencies. Upon  
36 receipt of a petition, the director would notify the agencies  
37 responsible for the conflicting or inconsistent rules. If the agencies  
38 cannot resolve the issue relating to concurrent or conflicting  
39 jurisdiction, the head of either or both of the agencies that adopted  
40 the rules under review would advise the Governor and the director  
41 of the impasse for such appropriate resolution as may be directed by  
42 the Governor.

43 Under both procedures, if it is determined that the conflict or  
44 inconsistency is the result of statutory law, written notice of this  
45 finding would be sent to the President of the Senate, the Speaker of  
46 the General Assembly, and the chairs of the Senate Legislative  
47 Oversight Committee and the Assembly Regulatory Oversight and  
48 Gaming Committee, or their successors.